

HOUSE HEALTH AND HUMAN SERVICES COMMITTEE SUBSTITUTE FOR
HOUSE BILL 10

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

AN ACT

RELATING TO THE CHILDREN'S CODE; SPECIFYING TO WHOM AND UNDER
WHAT CIRCUMSTANCES INFORMATION THAT IS HELD BY THE CHILDREN,
YOUTH AND FAMILIES DEPARTMENT THAT PERTAINS TO CHILD ABUSE AND
NEGLECT MAY BE SHARED; REQUIRING THAT INFORMATION BE PROVIDED
ABOUT CHILD FATALITIES OR NEAR FATALITIES; PROTECTING PERSONAL
IDENTIFIER INFORMATION OF DEPARTMENT CLIENTS; REQUIRING THE
COURT'S WRITTEN ORDER WHEN EXCLUDING MEDIA FROM AN ABUSE OR
NEGLECT PROCEEDING, WHICH IS APPEALABLE; REQUIRING REPORTS ON
THE CHILDREN, YOUTH AND FAMILIES DEPARTMENT'S WEBSITE;
PRESCRIBING A PENALTY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 32A-4-20 NMSA 1978 (being Laws 1993,
Chapter 77, Section 114, as amended) is amended to read:

"32A-4-20. CONDUCT OF HEARINGS--FINDINGS--DISMISSAL--

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underscored material = new
[bracketed material] = delete

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1 DISPOSITIONAL MATTERS--ORDER EXCLUDING MEDIA APPEALABLE--
2 PENALTY.--

3 A. The proceedings shall be recorded by
4 stenographic notes or by electronic, mechanical or other
5 appropriate means. The court docket number is a public record.

6 B. ~~[All]~~ Abuse and neglect hearings shall be closed
7 to the general public.

8 C. Only the parties, their counsel, witnesses and
9 other persons approved by the court may be present at a closed
10 hearing. The foster parent, preadoptive parent or relative
11 providing care for the child shall be given notice and an
12 opportunity to be heard at the dispositional phase. Those
13 other persons the court finds to have a proper interest in the
14 case or in the work of the court may be admitted by the court
15 to closed hearings on the condition that they refrain from
16 divulging any information that would identify the child or
17 family involved in the proceedings.

18 D. Accredited representatives of the news media
19 shall be allowed to be present at closed hearings, ~~[subject to]~~
20 on the condition that they refrain from divulging information
21 that would identify ~~[any]~~ the child involved in the proceedings
22 or the ~~[parent, guardian or]~~ custodian of that child and
23 subject to enabling ~~[regulations]~~ rules as the court finds
24 necessary for the maintenance of order and decorum and for the
25 furtherance of the purposes of the Children's Code. A child

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1 who is the subject of an abuse and neglect proceeding and is
2 present at a hearing may object to the presence of the media.
3 The court may exclude the media if it finds that the presence
4 of the media is contrary to the best interests of the child.
5 The judge shall submit a written order explaining the reasons
6 for excluding the media from a hearing.

7 E. If the court finds that it is in the best
8 interest of a child under fourteen years of age, the child may
9 be excluded from a hearing under the Abuse and Neglect Act. A
10 child fourteen years of age or older may be excluded from a
11 hearing only if the court makes a finding that there is a
12 compelling reason to exclude the child and states the factual
13 basis for the finding.

14 F. Those persons or parties granted admission to a
15 closed hearing who intentionally divulge information in
16 violation of this section are guilty of a petty misdemeanor.

17 G. The court shall determine if the allegations of
18 the petition are admitted or denied. If the allegations are
19 denied, the court shall proceed to hear evidence on the
20 petition. The court, after hearing all of the evidence bearing
21 on the allegations of neglect or abuse, shall make and record
22 its findings on whether the child is a neglected child, an
23 abused child or both. If the petition alleges that the parent,
24 guardian or custodian has subjected the child to aggravated
25 circumstances, then the court shall also make and record its

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1 findings on whether the aggravated circumstances have been
2 proven.

3 H. If the court finds on the basis of a valid
4 admission of the allegations of the petition or on the basis of
5 clear and convincing evidence, competent, material and relevant
6 in nature, that the child is neglected or abused, the court
7 shall enter an order finding that the child is neglected or
8 abused and may proceed immediately or at a postponed hearing to
9 make disposition of the case. If the court does not find that
10 the child is neglected or abused, the court shall dismiss the
11 petition and may refer the family to the department for
12 appropriate services.

13 I. A party aggrieved by an order entered pursuant
14 to Subsection D or H of this section may file an immediate
15 appeal to the court of appeals.

16 J. In that part of the hearings held under the
17 Children's Code on dispositional issues, all relevant and
18 material evidence helpful in determining the questions
19 presented, including oral and written reports, may be received
20 by the court and may be relied upon to the extent of its
21 probative value even though not competent had it been offered
22 during the part of the hearings on adjudicatory issues.

23 K. On the court's motion or that of a party, the
24 court may continue the hearing on the petition for a period not
25 to exceed thirty days to receive reports and other evidence in

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1 connection with disposition. The court shall continue the
2 hearing pending the receipt of the predisposition study and
3 report if that document has not been prepared and received.
4 During any continuances under this subsection, the court shall
5 make an appropriate order for legal custody."

6 SECTION 2. Section 32A-4-33 NMSA 1978 (being Laws 1993,
7 Chapter 77, Section 127, as amended) is amended to read:

8 "32A-4-33. CONFIDENTIALITY--~~[RECORDS]~~ INFORMATION--
9 PENALTY.--

10 A. As used in the Abuse and Neglect Act, "personal
11 identifier information" means the person's:

12 (1) name; and

13 (2) contact information, including home or
14 business address, email address or phone number.

15 B. In investigations and proceedings alleging abuse
16 or neglect, the department shall not disclose personal
17 identifier information of the child or the child's parents
18 except as follows:

19 (1) in the case of the death or near death of
20 a child;

21 (2) in cases in which a child is missing or
22 abducted or the child is or may be in danger of serious injury
23 or death unless immediate action is taken or there are other
24 exigent circumstances, the department shall release to law
25 enforcement and the nationally recognized organization that

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1 serves as the national clearinghouse and resource center for
2 information about missing and exploited children as much
3 personal identifier information as necessary to identify the
4 child, a possible abductor or a suspect in an abuse or neglect
5 case or to protect evidence of a crime against the child;

6 (3) when the child or the child's parents have
7 been publicly identified by a person outside the department; or

8 (4) to the persons enumerated in Subsection F
9 of this section.

10 C. Department information obtained during the
11 course of an investigation into allegations of abuse or neglect
12 shall be maintained by the department as required by federal
13 law as a condition of the allocation of federal funds in New
14 Mexico. The public release of department information shall be
15 construed as openly as possible under federal and state law.

16 D. Information released by the department that has
17 not otherwise been publicly released by a person outside the
18 department shall be redacted as needed to safeguard personal
19 identifier information. In a case in which a child or the
20 child's family has been publicly identified through press
21 reports, a lawsuit or other means, the department may respond
22 publicly with factual and complete information about the
23 actions the department has taken in the case.

24 [A. ~~All records or~~ E. Redacted information
25 concerning a party to a neglect or abuse proceeding, including

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1 social records; diagnostic evaluations; psychiatric or
2 psychological reports; videotapes, transcripts and audio
3 recordings of a child's statement of abuse; ~~[or]~~ and medical
4 reports incident to or obtained as a result of a neglect or
5 abuse proceeding or that were produced or obtained during an
6 investigation in anticipation of or incident to a neglect or
7 abuse proceeding ~~[shall be confidential and closed to the~~
8 ~~public]~~ may be released by the department to a person who is
9 conducting bona fide research, the results of which should
10 provide the department information on child abuse and neglect
11 that would be useful to the department in developing policy and
12 practice.

13 ~~[B.]~~ F. The ~~[records]~~ information described in
14 Subsection ~~[A]~~ E of this section shall be disclosed ~~[only]~~
15 without redaction to the parties and:

16 (1) court personnel and persons or entities
17 authorized by contract with the court to review, inspect or
18 otherwise have access to ~~[records or]~~ information in the
19 court's possession;

20 (2) court-appointed special advocates
21 appointed to the neglect or abuse proceeding;

22 (3) the child's guardian ad litem;

23 (4) the attorney representing the child in an
24 abuse or neglect action, a delinquency action or any other
25 action under the Children's Code;

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1 (5) department personnel and persons or
2 entities authorized by contract with the department to review,
3 inspect or otherwise have access to ~~[records or]~~ information in
4 the department's possession;

5 (6) any local substitute care review board or
6 any agency contracted to implement local substitute care review
7 boards;

8 (7) law enforcement officials, except when use
9 immunity is granted pursuant to Section 32A-4-11 NMSA 1978;

10 (8) district attorneys, except when use
11 immunity is granted pursuant to Section 32A-4-11 NMSA 1978;

12 (9) any state government or tribal government
13 social services agency in any state or when, in the opinion of
14 the department, it is in the best interest of the child, a
15 governmental social services agency of another country;

16 (10) a foster parent, if the records are those
17 of a child currently placed with that foster parent or of a
18 child being considered for placement with that foster parent
19 and the records concern the social, medical, psychological or
20 educational needs of the child;

21 (11) school personnel involved with the child,
22 but only if the ~~[records concern]~~ information concerns the
23 child's social or educational needs;

24 (12) a grandparent, parent of a sibling,
25 relative or fictive kin, if the ~~[records or]~~ information

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1 ~~[pertain]~~ pertains to a child being considered for placement
2 with that grandparent, parent of a sibling, relative or fictive
3 kin and the ~~[records or]~~ information ~~[concern]~~ concerns the
4 social, medical, psychological or educational needs of the
5 child;

6 (13) health care or mental health
7 professionals involved in the evaluation or treatment of the
8 child or of the child's parents, guardian, custodian or other
9 family members;

10 (14) protection and advocacy representatives
11 pursuant to the federal Developmental Disabilities Assistance
12 and Bill of Rights Act and the federal Protection and Advocacy
13 for Mentally Ill Individuals Amendments Act of 1991;

14 (15) children's safehouse organizations
15 conducting ~~[investigatory]~~ interviews of children on behalf of
16 a law enforcement agency or the department;

17 (16) representatives of the federal government
18 or their contractors authorized by federal statute or
19 regulation to review, inspect, audit or otherwise have access
20 to ~~[records and]~~ information pertaining to neglect or abuse
21 proceedings;

22 (17) ~~[any]~~ a person ~~[or entity]~~ attending a
23 meeting arranged by the department to discuss the safety, well-
24 being and permanency of a child, when the parent or child, or
25 parent or ~~[legal]~~ custodian on behalf of a child younger than

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1 fourteen years of age, has consented to the disclosure; ~~[and]~~

2 (18) the office of the state medical
3 investigator; and

4 ~~[(18)]~~ (19) any other person ~~[or entity]~~, by
5 order of the court, having a legitimate interest in the case or
6 the work of the court.

7 G. A party to a court proceeding relating to a
8 department investigation into allegations of abuse or neglect
9 may comment publicly as long as the party does not disclose the
10 personal identifier information that is still confidential for
11 the child or the child's parents.

12 ~~[G.]~~ H. A parent, guardian or ~~[legal]~~ custodian
13 whose child has been the subject of an investigation of abuse
14 or neglect where no petition has been filed shall have the
15 right to inspect any medical report, psychological evaluation,
16 law enforcement reports or other investigative or diagnostic
17 evaluation; provided that any identifying information related
18 to the reporting party or any other party providing information
19 shall be deleted or redacted. The parent, guardian or ~~[legal]~~
20 custodian shall also have the right to the results of the
21 investigation and the right to petition the court for full
22 access to all department ~~[records and]~~ information except
23 ~~[those records and]~~ that information the department finds would
24 be likely to endanger the life or safety of ~~[any]~~ a person
25 providing information to the department.

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1 I. The department is not required by this section
2 to disclose department information if, after consultation with
3 the district attorney, the district attorney determines that
4 disclosure would cause specific, material harm to a criminal
5 investigation or prosecution.

6 J. The department shall provide pertinent
7 department information upon request to a prospective adoptive
8 parent, foster parent or guardian if the information concerns a
9 child for whom the prospective adoptive parent, foster parent
10 or guardian seeks to adopt or provide care.

11 K. A person may authorize the release of department
12 information about that person but shall not waive the
13 confidentiality of department information concerning any other
14 person.

15 L. The department shall provide a summary of the
16 outcome of a department investigation to the person who
17 reported the suspected child abuse or neglect in a timely
18 manner, not later than twenty days after the deadline for
19 closure of the investigation.

20 ~~[D-]~~ M. Whoever intentionally and unlawfully
21 releases any information ~~[or records]~~ closed to the public
22 pursuant to the Abuse and Neglect Act or releases or makes
23 other unlawful use of ~~[records]~~ information in violation of
24 that act is guilty of a petty misdemeanor and shall be
25 sentenced pursuant to the provisions of Section 31-19-1 NMSA

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1978.

[E-] N. The department [~~shall~~] may promulgate rules for implementing disclosure of [~~records~~] information pursuant to this section and in compliance with state and federal law and the Children's Court Rules.

O. Nothing in this section or Section 32A-4-33.1 NMSA 1978 limits the right of a person to seek documents or information through other provisions of law.

P. Nothing in this section shall apply to the Indian Family Protection Act, information or records concerning Indian children or Indian parents, guardians or custodians, as those terms are defined in the Indian Family Protection Act, or investigations or proceedings pursuant to the Indian Family Protection Act."

SECTION 3. Section 32A-4-33.1 NMSA 1978 (being Laws 2009, Chapter 239, Section 52) is amended to read:

"32A-4-33.1. FATALITIES--NEAR FATALITIES--RECORDS RELEASE [~~WHEN A CHILD DIES~~].--

A. As used in this section, "near fatality" means an act that, as certified by a physician, including the child's treating physician, placed a child in serious or critical medical condition.

[A-] B. After learning that a child fatality or near fatality has occurred and that there is reasonable suspicion that the fatality or near fatality was caused by

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1 abandonment, abuse or neglect, the department shall [~~upon~~
 2 ~~written request to the secretary of the department~~] release the
 3 following information, if in the department's possession,
 4 within five business days:

5 ~~[(1) the age and gender of the child;~~
 6 ~~(2) the date of death;~~
 7 ~~(3) whether the child was in foster care or in~~
 8 ~~the home of the child's parent or guardian at the time of~~
 9 ~~death; and~~
 10 ~~(4) whether an investigation is being~~
 11 ~~conducted by the department.~~

12 ~~B. If an investigation is being conducted by the~~
 13 ~~department, then a request for further information beyond that~~
 14 ~~listed in Subsection A of this section shall be answered with a~~
 15 ~~statement that a report is under investigation.]~~

16 (1) for a fatality:
 17 (a) the name, age and gender of the
 18 child;
 19 (b) the date and location of the
 20 fatality; and
 21 (c) the cause of death, if known;
 22 (2) for a near fatality:
 23 (a) the age and gender of the child; and
 24 (b) the type and extent of injuries;
 25 (3) for either a fatality or near fatality:

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1 (a) whether the child is currently or
 2 has been in the custody of the department within the last five
 3 years or the child's family is currently or has been served or
 4 under investigation by the department within the last five
 5 years;

6 (b) whether the child lived with a
 7 parent, guardian or custodian; was in foster care; was in a
 8 residential facility or detention facility; was a runaway; or
 9 had some other living arrangement;

10 (c) whether an investigation is being
 11 conducted by the department or by a law enforcement agency, if
 12 known;

13 (d) a detailed synopsis of prior reports
 14 of abuse or neglect involving the child, siblings or other
 15 children in the home, if applicable; and

16 (e) actions taken by the department to
 17 ensure the safety of siblings, if applicable; and

18 (4) any other information that is publicly
 19 known.

20 C. Upon completion of a child abandonment, abuse or
 21 neglect investigation into a ~~[child's death]~~ fatality or near
 22 fatality, if it is determined that abandonment, abuse or
 23 neglect caused the ~~[child's death]~~ fatality or near fatality,
 24 the following documents shall be released upon request:

25 (1) a summary of the department's

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1 investigation;

2 (2) a law enforcement investigation report, if
3 in the department's possession; and

4 (3) ~~[a medical examiner's]~~ the medical
5 investigator's report in the case of a fatality, if in the
6 department's possession.

7 D. Prior to releasing ~~[any document pursuant to]~~
8 documents specified in Subsection C of this section, the
9 department shall consult with the district attorney and shall
10 redact:

11 (1) information that ~~[would]~~, in the opinion
12 of the district attorney, ~~[jeopardize a]~~ would cause specific
13 material harm to the criminal investigation or [proceeding]
14 prosecution;

15 (2) ~~[identifying]~~ personal identifier
16 information related to a reporting party or any other party
17 providing information; and

18 (3) information that is privileged,
19 confidential or not subject to disclosure pursuant to ~~[any]~~
20 Section 32A-4-33 NMSA 1978 or other state or federal law.

21 E. ~~[Once]~~ If documents pursuant to this section
22 have been released by the department, the department may
23 comment on the case ~~[within the scope of the release]~~.

24 F. Information released by the department
25 consistent with the requirements of this section does not

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1 require prior notice to any ~~[other individual]~~ person.

2 G. Nothing in this section shall be construed as
3 requiring the department to obtain documents not in the abuse
4 and neglect case file.

5 H. A person disclosing abandonment, abuse ~~[and]~~ or
6 neglect case file information as required by this section shall
7 not be subject to suit in civil or criminal proceedings for
8 complying with the requirements of this section.

9 I. The department shall continue to provide timely
10 allowable information to the public on the investigation into a
11 case of fatality or near fatality of a child, including a
12 summary report that shall include:

13 (1) actions taken by the department in
14 response to the case, including changes in policies, practices,
15 procedures and processes that have been made to address issues
16 raised in the investigation of the case and any recommendations
17 for further changes in policies, practices, procedures,
18 processes and other rules or laws to address the issues; and

19 (2) the information described in Subsection J
20 or K of this section.

21 J. If the summary report involves a child who was
22 residing in the child's home, the report shall contain a
23 summary of all of the following:

24 (1) whether services pursuant to the Abuse and
25 Neglect Act were being provided to the child, a member of the

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child's household or a person who had been arrested for abandonment, abuse or neglect of the child prior to the time of the fatality or near fatality and the date of the last contact between the person providing the services and the person receiving the services prior to or at the time of the fatality or near fatality;

(2) whether the child, a member of the child's household or the person who had been arrested for abandonment, abuse or neglect of the child prior to the fatality or near fatality was the subject of a current or previous department report;

(3) all involvement of the child's parents or the person who had been arrested for abuse or neglect of the child prior to the fatality or near fatality in a situation for which a department report was made or services provided pursuant to the Abuse and Neglect Act in the five years preceding the incident that culminated in the fatality or near fatality; and

(4) any investigation pursuant to a department report concerning the child, a member of the child's household or the person who had been suspected or arrested of the abandonment, abuse or neglect of the child or services provided to the child or the child's household since the date of the incident involving a fatality or a near fatality.

K. If the summary report involves a child who was

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in out-of-home placement, the summary report shall include:

(1) the name of the agency the licensee was licensed by; and

(2) the licensing history of the out-of-home placement, including the type of license held by the operator of the placement, the period for which the placement has been licensed and a summary of all violations by the licensee and any other actions by the licensee or an employee of the licensee that constitute a substantial failure to protect and promote the health, safety and welfare of a child.

L. Nothing in this section shall apply to the Indian Family Protection Act, information or records concerning Indian children or Indian parents, guardians or custodians, as those terms are defined in the Indian Family Protection Act, or investigations or proceedings pursuant to the Indian Family Protection Act."

SECTION 4. A new section of the Abuse and Neglect Act is enacted to read:

"[NEW MATERIAL] CREATION AND MAINTENANCE OF DASHBOARD ON DEPARTMENT WEBSITE--ANNUAL REPORT.--

A. The department shall create and maintain a public, easily accessible and searchable dashboard on the department's website. The confidentiality of personal identifier information shall be safeguarded consistent with federal and state law. The dashboard shall be updated at least

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1 quarterly and shall include the data to be reported to the
2 governor and the legislature.

3 B. By February 1 of each year, the department shall
4 submit a report to the governor and the legislature that
5 includes the following data for the prior twelve months ending
6 on December 31:

7 (1) the number of fatalities and near
8 fatalities of children in the custody of the department or as a
9 result of abandonment, abuse or neglect when in the custody of
10 a parent, guardian, custodian or other person;

11 (2) the number of children in department
12 custody and the average length of time in custody, including
13 the number of in-state and out-of-state placements in which
14 children are placed;

15 (3) the number of children in foster care and
16 the length of time in foster care or living with relatives or
17 fictive kin;

18 (4) the number of complaints received alleging
19 abandonment, abuse or neglect;

20 (5) the number of investigations that resulted
21 from the complaints, the number of complaints accepted for
22 investigation and not accepted for investigation and the
23 identified reasons in the aggregate for not investigating a
24 complaint;

25 (6) the number of children removed from the

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1 custody of a parent, guardian, custodian or other person and
2 the reasons for removals;

3 (7) the number of children returned to a
4 household from which they were removed;

5 (8) the number of children placed in the
6 custody of the department who have run away while in custody;

7 (9) the number of cases in which families
8 subject to court-ordered treatment plans or voluntary placement
9 agreements have absconded with children placed in the custody
10 of the department;

11 (10) the number of adoptions and the number of
12 adoptions for which funding was terminated prior to the child
13 reaching the age of eighteen;

14 (11) the number of children and cases
15 transferred to the jurisdiction of Indian nations, tribes and
16 pueblos pursuant to the Indian Family Protection Act; and

17 (12) any other information the department
18 considers of interest to the public.

19 C. Data shall be disaggregated by age, race,
20 ethnicity, gender, disability status and geographic location.

21 D. The report shall be published on the
22 department's website."